Supreme Court, U.S.
FILED
DEC 22 2000
OFFICE OF THE CLERK

No. 00-880

In The

Supreme Court of the United States

VERNICESA F. BARNES,

Petitioner,

versus

McDONALD'S CORP.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION

DAVID S. FOSTER
Counsel of Record
KEVIN C. MAY
LATHAM & WATKINS
Sears Tower, Suite 5800
Chicago, Illinois 60606
(312) 876-7700

W. LEE TUCKER
BOSWELL, TUCKER & BREWSTER
Bryant Center
408 North Reynolds Road
P.O. Box 798
Bryant, Arkansas 72089-0798
(501) 847-3031

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

McDonald's Corporation has no parent corporation and there are no publicly held companies that own 10% or more of McDonald's Corporation's stock.

STATEMENT OF THE CASE

Petitioner articulates no question warranting this Court's review. Nonetheless, because the petition is replete with misstatements, both with respect to the underlying facts of this case and its history in the district court, we are compelled by Supreme Court Rule 15 to correct those serious misstatements that bear on issues that would be before this Court if certiorari were granted.

Facts of the Case

Central to the merits of this case is petitioner's misstatement that she submitted a winning $200,000 game stamp in "The 1998 Monopoly Game at McDonald's" (the "Monopoly Game"). *See* Pet. at 6-7, 13. The district court determined that, in fact, "[p]laintiff did not possess a valid, winning ticket." Pet. App. at 12a. Instead, she obtained a mis-cut game stamp that was "null and void" under the Official Rules of the Monopoly Game (the "Official Rules"). *See id.* The Eighth Circuit agreed: "Barnes did not comply with the rules of the game (that is, the terms of the contract) because she did not submit a valid winning ticket. . . . " *Id.* at 2a.

Petitioner also falsely asserts that McDonald's did not provide notice of the Official Rules, including the rule establishing that mis-cut game stamps of the type she submitted are null and void. *See* Pet. at 12-13. To the contrary, the district court found that "[t]he Official Rules of the promotion were openly posted in all participating McDonald's." Pet. App. at 5a. Indeed, in connection with submitting her game stamp, petitioner herself declared that she had "read, understood, complied with and . . .

accept[ed] all of the Official Rules." *See id.* at 11a. Again, the Eight Circuit agreed, holding that "[c]ontrary to Barnes's assertion, McDonald's properly notified contestants of the rules of its game in accordance with the terms of the Arkansas Prize Promotion Act." *Id.* at 2a.

History of the Case

Petitioner states that McDonald's failed to respond to discovery requests as ordered by the district court. *See* Pet. at 7, 10-12. Not so. As the district court expressly noted, it ordered respondent "to answer six specific interrogatories" and "[t]hose interrogatories [were] answered." Pet. App. at 8a. In addition, the district court found that "the parties have had ample time to either receive discovery or force discovery through the Court." *Id.* The Eighth Circuit affirmed this decision, stating that petitioner "failed to invoke the powers of that court to compel the discovery she thought she needed, even though she had ample time and opportunity to do so." *Id.* at 2a.

REASONS FOR DENYING THE WRIT

Petitioner fails to identify a question worthy of review by this Court. Supreme Court Rule 10(a) provides that this Court will consider granting certiorari in cases where:

> [A] United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same

> important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. . . .

Petitioner ignores this rule, presenting no issue that could possibly warrant the attention of this Court. This is a straightforward affirmance of summary judgment dismissing meritless state law claims. The decision of the court of appeals was manifestly correct, and does not conflict with any decision of this Court or any other court of appeals.

Petitioner suggests two purported grounds for review. First, she argues that the district court should not have disposed of the case on summary judgment. She offers nothing, however, to suggest that the decision was in error and fails to articulate any genuine issue of material fact that could have been presented to a jury. Moreover, petitioner fails to explain how the summary judgment decision in this straightforward state law case warrants review by this Court. She complains that she was denied a jury trial, but that is precisely what Fed.R.Civ.P. 56 requires where there is no genuine issue of material fact to be decided by a jury. Petitioner's displeasure with the entry of summary judgment in this case extends no further than the particular circumstances of her case and presents no issue even arguably worthy of this Court's plenary review.

Second, petitioner argues that both the district court and the court of appeals misinterpreted the Arkansas Prize Promotion Act. Her claim is without merit. Both

lower courts carefully applied the unambiguous terms of this statute to the facts of this case. In any event, the lower court's interpretation of Arkansas state law raises no issue remotely warranting this Court's review. It is the "practice [of this Court] to accept a reasonable construction of state law by the court of appeals 'even if an examination of the state-law issue . . . might have justified a different conclusion.' " *Haring v. Prosise*, 462 U.S. 306, 314 n.8 (1983) (quoting *Bishop v. Wood*, 426 U.S. 341, 346 (1976)). As this Court has explained, "a challenge to state-law determinations by the court of appeals will rarely constitute an appropriate subject of this Court's review." *Id.* This case is no exception. Ms. Barnes' petition should be denied.

CONCLUSION

For all of the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

DAVID S. FOSTER
Counsel of Record
KEVIN C. MAY
LATHAM & WATKINS
Sears Tower, Suite 5800
Chicago, Illinois 60606
(312) 876-7700

W. LEE TUCKER
BOSWELL, TUCKER & BREWSTER
Bryant Center
408 North Reynolds Road
P.O. Box 798
Bryant, Arkansas 72089-0798
(501) 847-3031